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IN THE

Supreme Court of the United States

WASHINGTON, D. C.

Case No. 779.

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, ET ALS.,

Respondents.

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI.

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Petitioner Appearing in Person,
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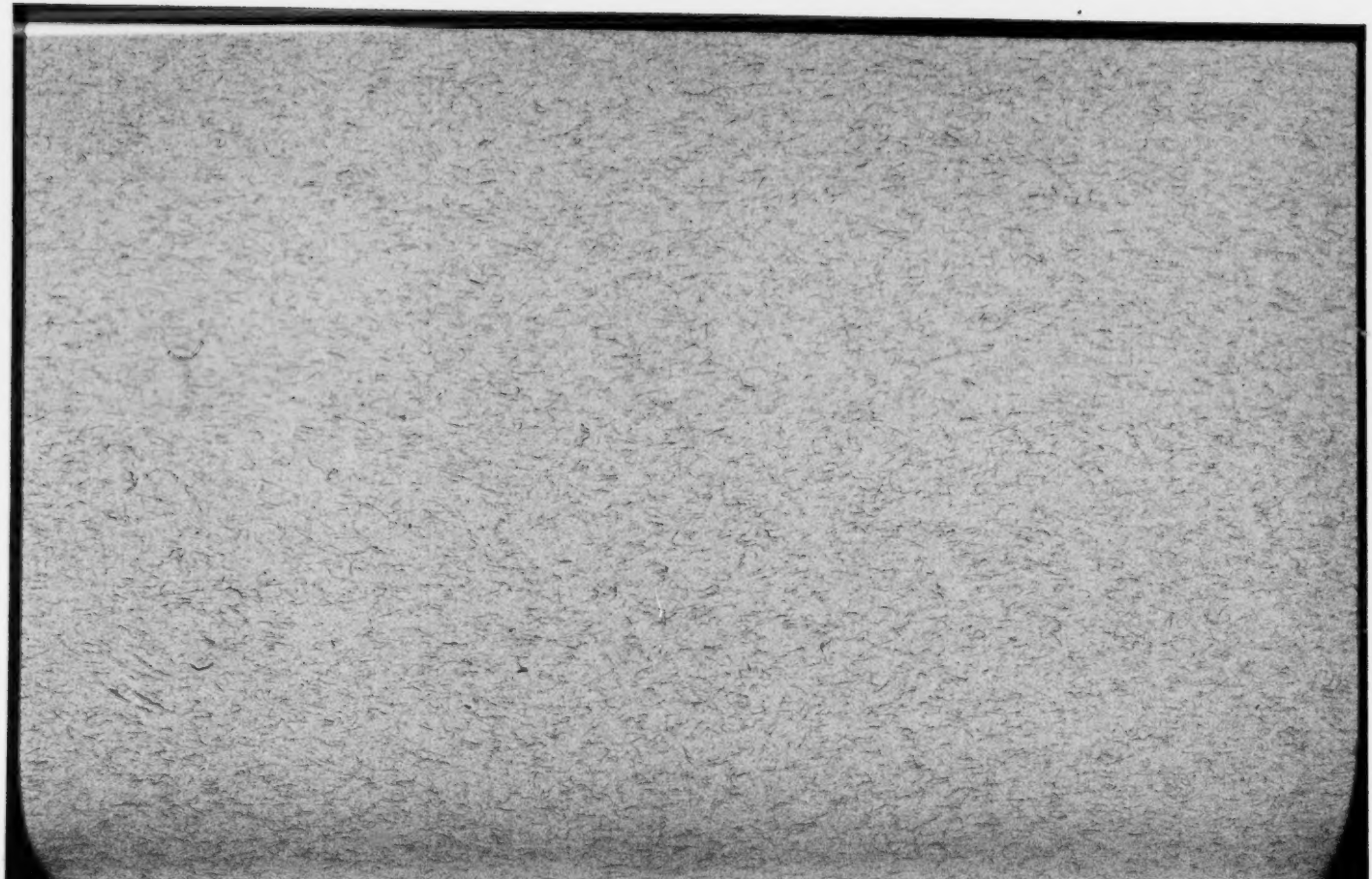

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REPLY BRIEF.

1. On the merits of the so-called Questions Involved set out on pp. 1-2 of respondents' brief, the petitioner's reply is to be found in the facts, laws, and documents embodied in and set forth in the thirty-one (31) paragraphs of the Complaint of the suit in equity for writ of injunction just filed with the Clerk of the District Court of the United States within and for the District of New Jersey; by reference the same paragraphs are incorporated herein and made a part of this reply brief, ten copies of which are herewith respectfully submitted.

2. The respondents and their attorneys have no right to insist that the Circuit Court of Appeals did act properly in affirming the action of the District Court and at the same time operate the conspiracy openly within the territorial jurisdiction of the District Court; or that the Circuit Court acted properly in affirming the action of the District Court granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton because it was by and through their very own acts which the Utah Fuel Company operated the conspiracy in the State of Utah for several years; nor that the Circuit Court of Appeals did act properly in affirming the action of the District Court in refusing to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased; and further in refusing to enter a default judgment against the Bamberger Coal Company; because the Opinion of the said Circuit Court reads: For the reasons sufficiently set forth in the memorandum Opinion of Judge Walker filed November 19, 1941 the orders of the District

Court from which the plaintiff appealed are affirmed. See pp. 47-48 of Petition.

Ex-judge Walker gave no reason as to the Bamberger Coal Company. He failed to decide the motion, leaving the same under his advisement; then left the District Court for the job with the telephone company. Upon these said questions the Circuit Court of Appeals did not act at all. Further, with respect to the Bamberger Coal Company the said H. Collin Minton, Jr., and H. Brua Campbell have no right to be heard, because they did not file any pleading as an answer to the plaintiff's complaint and motion for leave to substitute it; and did not appear on the hearing of the motion to substitute said coal company. Respondents filed their Notice of Motion for Order striking complaint as to Utah Fuel Company and H. Collin Minton, Jr., on April 24, 1940. To this said motion they attached a Special Appearance for Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey, and William D. Sutton. See page 231 of Petition. This said motion was heard on May 6, 1940. Notice of Motion to Substitute Bamberger Coal Company in place and stead of Simon Bamberger, deceased, filed May 20, 1940. Motion papers were served through the United States Marshal for the District of Utah, who on June 3, 1940 returned Summons served on Bamberger Coal Company by serving Wm. D. Eldridge, Vice President. On June 10, 1940, said motion was heard on a regular Motion Day and there were no appearance in opposition. A due and proper consideration of the proceedings had in this case will show that H. Collin Minton, Jr., is a person unfit to practice law.

3. The appearances of Grover A. Giles, Attorney General of the State of Utah; and Zar E. Hayes, Assistant Attorney General of the State of Utah. Petitioner says, and the certified Exhibits show, that the respondent Utah

Fuel Company and associated corporations maintain coercive and fanatic influence over the officials of the State of Utah. In the instant suit their said appearances are unauthorized by, and violative to, the laws of the State of Utah. Chapter 6, State Officers. ATTORNEY-GENERAL. 87-6-1. It is the duty of the Attorney General:

(1) To attend the Supreme Court of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board or commission thereof in an official capacity is a party; and he shall have charge as attorney of all civil legal matters in which the state is in anywise interested.

(13) To institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases to forfeit their corporate franchises, dissolve such corporations, and wind up their affairs.

In this suit the state of Utah is not interested. Neither the state nor any of its boards or agencies is called upon to pay any damage, nor to make good any judgment which may be given in the present suit. It is not interested because it did not authorize its officials to engage in conspiracies which are against it and against its laws, as well as against its public policy as it is declared by its people. It is not interested because it did not ask the Utah Fuel Company to come in and stick up its officials and hold away its wealth. Petitioner does not demand of and from the State of Utah damages for the wrongs committed by its officials because they committed them for whatever there was in the plot to be had and not in defense of the state. Petitioner is and always has been a true friend of

the state of Utah and its citizens. The attorney general and assistant attorney general have no right to represent Dr. A. C. Callister and Dr. E. D. Smith because they were not officials of the state of Utah when they staged the mob at Salt Lake City, Utah. The assistant attorney general argued before the Circuit Court that he represented them because they were called in by the District Court to make certain examinations. The attorney general and assistant attorney general is not authorized to represent every person who is called in by any of the courts of the state to take part in any mob staged by corporations and individuals against any peaceful person.

AS TO THE RESPONDENTS' COUNTER STATEMENTS.

Replying counter statement No. 1 the petitioner says:

4. The Hamilton-Brown Shoe Co. v. Wolf Brothers & Co. cited by the respondents and their said attorneys is as follows: Mr. Justice Pitney delivered the Opinion of the Court, and on page 270 2d. Co. 1, says: Complainant appealed to Circuit Court of Appeals, contending that a decree for the profits upon the first two classes of shoes, in accordance with the master's recommendation, and that it should have included the profits upon the third class, which were denied by the master. The Court of Appeals reversed the decree, with directions that defendant's exceptions to the master's report be overruled, that the report be confirmed, and that a decree be entered against defendant for the amount recommended by him, with costs. 124 C. C. A. 409, 206 Fed. 611. This writ of certiorari having been allowed, we proceed to deal with the questions presented by the Court (on page 271). It is, of course, suf-

ficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed. And, although in this instance the interlocutory decision may have been treated as settling "the law of the case" so as to furnish the rule for the guidance of the referee, the District Court, and the Court of Appeals itself upon the second appeal, this Court is now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings. Panama R. Co. v. Napier Shipping Co., 166 U. S. 280, 284, 41 L. Ed. 1004, 1005, 17 Sup. Ct. Rep. 572

(b) Wolf Brothers & Company Petitioners v. Hamilton-Brown Shoe Company (No. 764), 204 U. S. 53 L. Ed. 1063. Petition for Writ of Certiorari to the U. S. Circuit Court of Appeals for the 8th Circuit, April 12, 1909, Denied. The writ was denied in this case but was granted in the Hamilton-Brown Shoe Co. petitioner v. Wolf, etc., U. S. C. A. Tit. 28, Sec. 725. Laws of States as Rules of Decisions.

(c) The rulings of the Court of Errors and Appeals of the State of New Jersey in the cases cited and referred to in K. second par. on page 10 of the Petition are of such and such standings as to compel the Courts of the United States to follow its said announcements. North Philadelphia Trust Co. v. Smith (C. C. A. N. J. 1926), 13 F. 2d. 585. We see no reason why they should not be followed by the courts of the United States. Erie R. Co. v. Hilt (N. J. 1918), 247 U. S. 97, 38 S. Ct. 435, 62 L. Ed. 1003.

(d) WORDS AND PHRASES PERMANENT EDITION. VOL. 16. Final Decisions, p. 593. A "final" decision for purpose of appeal is not necessarily the last decision in the case and its nature or effect rather than the

stage at which it is rendered is the true test. Laws 1898, Act 40. Dole v. Hear, 14 Haw. 554; Barthrop v. Kona Coffee Co., 10 Haw. 398.

(e) A "final decision" for appeal purposes is not necessarily the last decision in a case; the effect of an order being the true test of its finality and appealability, rather than the stage at which it was rendered. Hamburg v. Namura, 13 Haw. 702.

(f) It is the filing of signed findings and conclusions and order for judgment that constitutes the final decision, which is effective only from the date of filing and which is not made until deposited with the clerk for filing. Crane v. First Nat. Bank, 144 N. W. 96, 97, 26 N. D. 268.

(g) Hughes Federal Practice, Vol. 5, Sec. 2913. As the jurisdiction of the Circuit Court of Appeals is wholly statutory (Emlenton Refining Co. v. Chambers (C. C. A. Pa. 1926) 14 F. 2d. 104, certiorari denied, 273 U. S. 731, 47 S. Ct. 240, 71 L. Ed. 863) the meaning of "final," in a statute which limits appeals to "final decrees," becomes a matter of statutory construction, and it is within the province of the federal court to declare that a "final order" is one that ends the litigation in the trial court and that the legislative intent was against piecemeal appeals; and the use of the term "final decisions" in the act creating the Circuit Court of Appeals, to indicate a condition of reviewability, was intended to serve the same meaning as "final judgments and decrees" in earlier statutes regulatory of appellate jurisdiction (Webster Coal & Coke Co. v. Casatt (1907), 207 U. S. 181, 28 S. Ct. 108, 52 L. Ed. 160; Pennsylvania Coal & Coke Co. v. Cassatt, 207 U. S. 187, 28 S. Ct. 110, 52 L. Ed. 133; In re Tiffany (1920) 252 U. S. 32, 40 S. Ct. 239, 64 L. Ed. 443.

(h) A "final decision" is an order or judgment finally determining a particular suit (though it does not bar another action or proceeding in the same cause) (Stevens v. Nave-McCord Mercantile Co. (Colo. 1906), 150 F. 71, 80 C. C. A. 25), disposing of the entire controversy between the parties on the merits of the case, leaving nothing to be done other than to enforce by execution, what has been determined. United States v. Bighorn Sheep Co. (C. C. A. Wyo. 1921), 276 F. 710; Watson v. Employers' Liability Assur. Corp. (D. C. Tex. 1928), 23 F. 2d. 682.

(i) Sec. 3201. Finality-Judgment awarding or denying Mandamus. A judgment denying a writ of mandamus is final. Hartman v. Greenhow (1880), 102 U. S. 672, 675, 676, 26 L. Ed. 271. Mr. Justice Field delivered the Opinion of the Court (on p. 273): The judgment denying the writ of Mandamus was a final determination against the claim of the petitioner. A mandamus in cases of this kind is no longer regarded in this country a mere prerogative writ. It is nothing more than an ordinary proceeding or action in which the performance of a specific duty, by which the rights of the petitioner are affected, is sought to be enforced. Says Mr. Chief Justice Taney: "It undoubtedly came into use by virtue of prerogative power in the English Crown, and was subject to regulations and rules which have long since been disused; but the right to the writ and the power to issue it have ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable. It was so held by this Court in the case of Kendall v. United States 12 Pet., 615, and Kendall v. Stokes 3 How., 100; Ky v. Dennison, 24 How. 97 (65 U. S. XVL, 725. The Judgment, therefore, in the case, stands like the judgment in an ordinary action at law, subject to review under similar conditions.

The Memorandum Opinion of the Findings of Fact and Conclusions of Law of Ex-District Judge Walker as it is drawn in favor of H. Collin Minton, Jr., Caroll C. Johnson, William V. Rosenkrans, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey, and William D. Sutton, and the Orders signed and entered thereupon end the litigation in this suit in the District Court between this petitioner and the said respondents and are final orders and indicate a condition of reviewability within the meaning of the just above quoted authorities. The contention of the respondents and their said attorneys as to the petition being abortive is of no merits. The nature or effect rather than the stage at which the decision is rendered is the true test. Laws 1898, Act 40, Dole v. Gear, 14 Haw. 554; Barthrop v. Kona Coffee Co., 10 Haw. 398.

5. Replying Counter Statement No. 2, the petitioner insists that subdivision (b) of par. 5 of Supreme Court Rule 38 affords the following proper bases for the petition:

Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; This is pleaded. See M. JURISDICTION. (f) On page 14 of petition; or has decided a (several) federal questions in a way probably in conflict with applicable decisions of this court. See the Reasons for granting the Writ and Cases Cited therein, as set forth on pages 21 to 34 of the Petition; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. This is also pleaded in the petition. See the Assignment of Errors set forth on page 35 to par. 9 on page 37.

Replying Counter Statement 3 the petitioner says that the petition is in strict compliance with the provisions of subdivision 2 of Sup. Ct. Rule 38. The petition shall contain a summary and short statement of the matter involved; See A, on pp. 2-3-4; see also B, on pp. 4-5; C, on p. 5; D, on pp. 5-6; E, on p. 6; F, on pp. 6-7; G, on pp. 7-8, of the petition. A statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question; this is also pleaded. See M, Jurisdiction, pp. 13-14; see also J, on pp. 9-10; K, on pp. 10-11-12; the question presented; the questions presented are twenty-six, and are set forth on pp. 15 to 21 of petition; and the reasons relied on for the allowance of the writ. The reasons relied on for the allowance of the writ of certiorari are set forth on pages 21 to 34, inclusive, of the petition. It follows that counter statement 3 is without merits. It can only serve to libel those who plead it.

Replying Counter Statement 4, the petitioner says that this said statement is obscene and objectionable pleading. See Table of Contents of Petition and the Notice to the Respondents and their attorneys printed on page 42 of the petition.

Replying Counter Statement 5, the petitioner says that this said statement is also obscene and unreasonable, because, in the first place, they were served with printed copies of complaint and are presumed to have in their possession seven (7) copies of the complaint and index attached thereto complete, and at the same time quote (p. 3) from complaint.

Replying Counter Statement 6, the petitioner says that the declaration is before this court and the requisite number of copies filed with the clerk of this court and this does not give counsel for the respondents any right to libel the humble petitioner. And further the excerpt from

the Opinion of the Supreme Court of Iowa in Crabtree v. Steele, 115 N. W. 593, has nothing to do and affords no defenses to the criminal acts in violation of the Constitution and laws of the United States of the defendants. The liability of the defendants is fixed by Federal Law and not by the said Crabtree case. See the petition and briefs attached thereto. See also the exhibits filed in this court as well as those left in the District Court.

Replying Counter Statement 7, the petitioner says that the ruling of the District Court is biased and violative to the laws of the United States. Also the Articles of the United States Constitution relied upon by the petitioner. See pages 293-305 of petition; pp. 28-29-30-31 and cases cited thereunder in the petition for the Writ of Certiorari.

Accordingly, the petitioner urges that this Court may not consider the respondents' brief, but proceed and grant the Writ of Certiorari as it is in the right and justice and the laws of the United States, the interest of the public, and the interest of your humble petitioner.

Respectfully submitted,

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Dated the 16th day of March, A. D. 1943.